# HIGH COURT OF UTTARANCHAL AT NAINITAL

## First Appeal No. 237 of 2001
## (Old No. 228 of 1987)

1. State of U.P. through the Collector, Dehradun.
2. U.P. Awas Evam Vikas Parishad Lucknow,
   104, M.G. Marg, Lucknow. **.....Appellant.**

**Vs**

1. Jagdish Prasad.
2. Raj Kumar.
3. Sushil Kumar.
4. Ashok Kumar.
5. Vinod Kumar.
6. Pramod Kumar (Minor)
7. Subodh Kumar (Minor)

   All R/o Chander Prakash, Dharampur, Dehradun.
   Respondent Nos. 6 and 7 are under guardianship
   Of elder brother Sri Vinod Kumar. **..... Respondents**

**Sri Nand Prasad learned Standing Counsel for the appellant No. 1**
**Sri K.S. Mehta learned counsel for the appellant No. 2**
**Sri Arvind Vashistha and Sri Jagdish Prasad**
**Learned counsel for the respondents.**

Dated: 19-6-2006

**Hon'ble B.S. Verma, J.**

Heard Sri Nand Prasad learned Standing Counsel for the appellant No.1, K.S. Mehta learned counsel for the appellant No.2 and Sri Arvind Vashistha and Sri Jagdish Prasad learned counsel for the respondents.

This appeal has been preferred against the judgment and decree dated 22-10-1986 passed by Sri Bhanwar Singh the then Additional District Judge, Dehradun awarding solatium @ 30% on the amount of compensation and directed to pay interest @ 15% per annum on the amount of compensation in Misc. Case No. 41 of 1985 arising out of Land Acquisition Case No. 134 of 1979(Review) between Jagdish Prasad and others Vs. The Collector, Dehradun.

The impugned order has been challenged on the ground that the appellant No. 2 U.P. Avas Evam Vikas Parishad was required to pay the compensation to the claimant-respondents was not arrayed as respondents or the opposite parties in the land acquisition reference or the review application, therefore, the judgment and decree against the U.P. Avas Evam Vikas Prishad is patently against the Rule of Natural Justice.

The Review Application was filed by the claimant-respondents for review of the order dated 27-9-1984 passed in the Land Acquisition No. 134 of 1979 in between Jagdish Prasad and others Vs. The Collector, Dehradun with a prayer to grand solatium @ 30% instead of 15% and interest @ 15% instead of 6% in view of the amended Act No. 68 of 1984.

The short controversy before the Reference Court was whether review petitioners were entitled for the enhanced solatium and interest as have amended by the Act No. 68 of 1984 in view of Section 23(2) and Section 28 of the Land Acquisition Act No. 1 of 1984.

The learned additional District Judge has relied upon the judgment of the Apex Court in the case of ***"Bhag Singh and others V. Union Territory of Chandigarh [AIR, 1984, Supreme Court, 1576]*** in which it was held that the provisions of Section 23(2) and 28 are applicable to all proceedings relating to compensation pending on the date of commencement of amending Act or filed subsequent to that date whether before the Collector or before the court or High Court or Supreme Court.

Learned counsel for the Avas Evam Vikas Parishad Sri K.S.Mehta and learned Standing Counsel Sri Nand Prasad for the State vehemently argued that the judgment passed by the Apex Court in ***Bhag Singh Case (supra)*** has been over-ruled by the Constitution Bench judgment passed in the case ***of "Union of India and another V. Raghubir Singh (dead) by LRs. etc." "Prithpal Singh and***

***others Vs. Union of India", Ram Mehar Rajkumar and others etc. V. Union of India and others" and "Delhi Cattle Breeding Farms Pvt. Ltd. etc. V. Union of India" [(1989) 2, Supreme Court Cases, Page 757].***

It has been held by the constitution Bench of the Apex Court that the benefit of the amended Act would apply only to the awards made by the Collector or Court between 30th April 1982 and September 24, 1984 and not before. The benefits extend to appeals decided by them in respect of such awards only decided any time after April 30, 1982 and the benefits of the amended provisions cannot be granted by the High Court or the Supreme Court in respect of the award made by the Collector or court prior to 30th April, 1982 and the judgment rendered by the Apex Court in ***Bhag Singh and others V. Union Territory of Chandigarh [AIR, 1985, Supreme Court, 1576]*** and ***State of Punjab V. Mohinder Singh and another [AIR, 1987, Supreme Court, 758]*** have been over-ruled.

It is not disputed that the award by the Reference Court was passed on 27-9-1984 after the enforcement of the amended provisions. It is pertinent to mention here that the Act No. 68 of 1984 came into force on 24.9.1984. It is not an award by the court made between 30.4.1982 and 24.9.1984. Even though in view of the Constitution Bench judgment, referred to above, the respondent-review petitioners are also entitled to the enhanced solatium and interest even if the award had been passed between April 30, 1982 and September 24, 1984.

Now the only question remains whether in view of the Apex Court judgment in the case of ***"U.P. Awas Evam Vikas Parishad vs Gyan Devi (Dead) by LRS and others" [(1995) 2 Supreme Court Cases, page 326],*** this appeal can be remanded to the Reference Court for a fresh decision on the ground that in the review petition, the U.P. Avas Evam Vikas Parishad was not a partly and being not heard by the Reference Court.

The initial award by the Reference Court was passed on 27-9-1984, which has not been challenged before this Court in appeal and on the point of quantum of compensation, the judgment of the Reference Court has become final. If the case is remanded only on this legal issue, that will be a futile exercise. The appeal is a continuation of the trial or reference and here U.P. Avas Evam Vikas Parishad itself has filed the appeals and I have heard at length Mr. K.S. Mehta, learned counsel, on this point. I do not find any force in the contention raised by the appellant on the ground that the review petitioners were not entitled for the enhanced solatium and interest awarded by the Reference Court.

The similar controversy has already been decided by this Court on 4.5.2006 in First Appeal No. 236 of 2001 State of U.P and others Vs. Jyoti Prasad.

For the reasons aforesaid, the appeal is devoid of merit and is liable to be dismissed.

The appeal is hereby dismissed. No order as to costs.

**(B.S. Verma, J.)**

**Dated:-19-6-2006**

*M.K.*